ATTACHMENT B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ZITO CANTON, LLC, *Complainant*, v. PENNSYLVANIA POWER & LIGHT COMPANY, *Respondent*.	File No.

DECLARATION OF COLIN HIGGIN

I, COLIN HIGGIN, declare as follows:

1. I serve as Vice President and General Counsel of Zito Canton, LLC ("Zito"), with a general office address of 102 South Main Street, Coudersport, PA 16915. I make this Declaration in support of Zito's Pole Attachment Complaint in the above-captioned case. I know the following of my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.

2. I have served as Zito's Vice President and General Counsel for 11 years. In this role, I am responsible for all of Zito's legal affairs including, but not limited to, pole attachment disputes.

3. I have reviewed the allegations made in the Pole Attachment Complaint filed in this proceeding as well as the exhibits attached hereto, and verify that they are true and correct to the best of my knowledge, information and belief.

4. To construct its network in Pennsylvania, Zito requires access to poles owned or controlled by Pennsylvania Power & Light ("PPL").

5. In 1977, Zito's predecessor entity, Retel TV Cable Co., entered into a pole attachment agreement with PPL in Pennsylvania pursuant to which Zito is authorized to attach to PPL owned and controlled poles ("Agreement"). *See* Exhibit 1 (Agreement).

6. Pursuant to the Agreement, prior to attaching facilities to PPL's poles, Zito submits a pole attachment application to PPL that specifies the nature of the attachments requested and the particular poles to which attachment is sought.

7. The terms of the Agreement provide that, prior to attaching facilities to PPL-owned poles, Zito is responsible for conducting a "pre-attachment inspection" to determine whether the attachment can be made according to the specifications set forth in the Agreement, including the National Electrical Safety Code ("NESC") or, if any on-pole alterations or adjustments are required to accommodate the new proposed attachment ("make-ready") and to design the work accordingly ("engineering"). *See* Exhibit 1 § 4.2.

8. Since prior to 2015, PPL has refused to accept Zito's pre-attachment inspection information and instead has performed the inspection, at Zito expense, using a third-party contractor. PPL also uses a third party contractor to design any required make-ready work. PPL selects and controls the third party contractors without any input from Zito, and charges Zito for the full cost of the contractor's pre-attachment inspection and make-ready design work.

9. The make-ready and pre-attachment inspection charges invoiced by PPL for its third-party contractors' services are significantly higher than charges imposed for similar work by other Pennsylvania pole-owning utilities and telecommunications providers.

10. In early 2016, Zito began to question PPL's pre-attachment inspection process and related charges, as well as the proposed make-ready work solutions proposed by Zito's third party contractors. Specifically, Zito challenged PPL's pre-attachment survey and engineering work as going beyond what was necessary to determine whether and where Zito's attachments were feasible, and as unreasonably high, particularly in comparison to other pole owners. Zito also challenged PPL's refusal to process any of Zito's pole attachment applications until all disputed survey charges were paid. In addition, on numerous occasions, Zito requested additional cost details to enable Zito to assess the reasonableness of the high pre-attachment inspection and the proposed make-ready work and charges. *See, e.g.,* **Exhibit 2** (March 17, 2016 letter on which I am copied from Cherie Kiser, Esq., on behalf of Zito, to Thomas Magee, counsel to PPL); **Exhibit 3** (May 17, 2016 letter on which I am copied from Cherie Kiser, Esq., on behalf of Zito, to Thomas Magee, counsel to PPL); **Exhibit 4** (email dated May 19, 2016 from me to Ryan Yanek and Jose Silverio, both with PPL, responding to PPL notice that it would not be processing any new pole attachment applications from Zito, including those applications for which Zito had made payment, due to the parties' billing dispute); **Exhibit 5** (email dated June 3, 2016 on which I am copied from Cherie Kiser, Esq., on behalf of Zito, to Thomas Magee, counsel to PPL); **Exhibit 6** (email dated June 9, 2016 on which I am copied from Cherie Kiser, Esq., on behalf of Zito, to Thomas Magee, counsel to PPL).

11. Zito has, on multiple occasions, attempted to resolve the disputed issues described above with PPL, including with assistance from outside counsel. From June to August, 2016, Zito participated in FCC staff-supervised mediation in an effort to resolve the parties' disputes. The mediation did not resolve the parties' dispute concerning PPL's unjust and unreasonable pre-attachment inspection process, its lack of essential cost detail related to is pre-inspection

process and make-ready proposals, or its refusal to process applications until all disputed charges, including applications unrelated to the dispute, are paid.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: _____
Colin Higgin

Dated: October 11, 2017

EXHIBIT 1

PPL

POLE ATTACHMENT AGREEMENT

BETWEEN

PENNSYLVANIA POWER & LIGHT COMPANY

AND

RETEL TV CABLE CO.

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THIS AGREEMENT, made this 22nd day of DECEMBER, 1977, between PENNSYLVANIA POWER & LIGHT COMPANY, a Pennsylvania corporation, having its principal office in the City of Allentown, Lehigh County, Pennsylvania, hereinafter called "Licensor" and RETEL TV CABLE CO., a sole proprietorship, having its principal office in the Township of Old Lyc. Lycoming County, Pennsylvania, hereinafter called "Licensee".

WITNESSETH:

WHEREAS, Licensee furnishes, or is about to furnish, community antenna television service in the Commonwealth of Pennsylvania within the certificated territory of Licensor; and

WHEREAS, Licensee desires to place certain of its community antenna television facilities and apparatus on poles of the Licensor; and

WHEREAS, Licensor to the extent that it has a legal right so to do, is willing to grant permission to Licensee to attach certain of Licensee's facilities and apparatus to Licensor's poles upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto intending to be legally bound, do hereby mutually covenant and agree as follows:

ARTICLE 1

Permission to Attach

1.1 Licensor, to the extent that it has a legal right so to do, hereby grants permission to Licensee to make attachments of Licensee's community antenna television cable and necessary appurtenant facilities to the poles of Licensor, as are designated in the dated schedule marked "Exhibit I" attached hereto and made a part hereof.

1.2 Licensee may during the term of this Agreement or any renewal thereof make attachments to additional poles of Licensor by submitting an application to Licensor and obtaining Licensor's approval thereof. The form of application to be used by Licensee is attached hereto as "Exhibit II". Non-planned attachments may be made by Licensee to poles of Licensor provided that Licensee verbally notifies Licensor that such attachments have been made, and submits an application to Licensor for such attachments within forty-eight (48) hours from the date of making such attachments.

1.3 With respect to the attachments referred to in Section 1.2 hereof, Licensee agrees that it shall make such attachments within ninety (90) days from the date approval is obtained from Licensor or within ninety (90) days from the date said poles are made available for Licensee's use. It is understood by Licensee that failure to make such attachments within such ninety (90) day period may result in the termination of the right to attach to those poles where the installation has not been fully completed.

1.4 Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by Licensor to others not parties to this Agreement, by contract or otherwise, to use any poles covered by this Agreement; and Licensor shall have the right to continue and extend such rights or privileges. The attachment privileges herein granted shall at all times be subject to such existing contracts and arrangements.

ARTICLE 2

Term of Agreement

This Agreement shall become effective January 1, 1978 and shall continue in full force and effect for a term of one year and thereafter from year to year unless sooner terminated by either party by giving to the other not less than ninety (90) days written notice of its intention to terminate same.

Furthermore, Licensor reserves the right to terminate the permission granted to Licensee for attaching to any specific pole or poles, when in Licensor's sole judgment such action is necessary for the protection of its own interests, for reasons beyond its own control or upon Licensee's failure to comply with any of the terms and conditions of this Agreement, by giving to Licensee ninety (90) days notice in writing of its intent to terminate same.

ARTICLE 3

Definitions

For the purpose of this Agreement the following terms when used herein shall have the following meaning:

3.1 Net-Non Betterment Cost - Cost of furnishing and erecting a new pole, less credit for used life of the existing pole multiplied by the applicable used life ratio.

3.2 Attachment - The binding or fastening of Licensee's facility to the poles of Licensor by means of, but not limited to bolts, lags and screws.

3.3 Multiple Attachments - The binding or fastening of additional attachments, in excess of the first attachment to any particular pole of Licensor, by means of, but not limited to bolts, lags and screws. Guying attachments maintained by Licensee, if said attachments are required by Licensor, shall not be considered an attachment.

3.4 Non-Planned Attachments - Any attachment made by Licensee to the pole or poles of Licensor without a license due to extreme circumstances.

3.5 Unauthorized Attachments - Any attachment of Licensee's facilities to Licensor's poles that are not covered by a license that are discovered as a result of a field inventory survey.

3.6 Pole Mounted Amplifier/Power Supply - A pole mounted amplifier or pole mounted supply shall mean those amplifiers or

power supplies that are affixed to and supported solely by Licensor's pole.

3.7 Strand Mounted Amplifier/Power Supply - A strand mounted amplifier or strand mounted power supply shall mean those amplifiers or power supplies that are supported solely by Licensee's wire or cable.

3.8 Field Inventory Survey - The periodic survey conducted by Licensor of Licensee's attachments on poles of Licensor.

3.9 Pre-Attachment Inspection - The inspection of Licensor's poles by Licensee to determine whether or not attachments may be made according to the specifications set forth by this Agreement.

3.10 Post Attachment Inspection - The inspection by Licensor of Licensee's attachments made to the poles of Licensor, as indicated on application for license, to assure Licensor that such attachments have been made according to the terms and conditions of this Agreement.

3.11 Make Ready Work - Work done by Licensor to a pole or poles to which Licensee desires to make an attachment but is inadequate, requires replacement or otherwise needs rearrangements of the Licensor's existing facilities.

ARTICLE 4

General Administrative Details and Procedures

4.1 The administrative details and procedures contained herein shall apply to all attachments made by Licensee pursuant

to this Agreement and shall remain in effect until such time as a change in said details and/or procedures are deemed necessary by Licensor. In the event changes are made to such details and/or procedures they shall be issued by Licensor to Licensee and when issued shall form a part of this Agreement.

4.2 Licensee shall make a pre-attachment inspection to determine whether the attachments contemplated by Licensee can be made in accordance with the requirements of Licensor as set forth in Article 5 of this Agreement.

4.3 Licensor shall have the sole right to refuse to issue a permit to the Licensee for the attachment of Licensee's facilities to any pole or poles of Licensor. If, however, a permit is issued by Licensor to Licensee, the attachments covered herein shall be made, operated, maintained, renewed, replaced and/or removed at Licensee's sole cost and expense in a safe condition and in strict conformity with the terms and conditions set forth in this Agreement.

4.4 Licensee may at any time during the term of this Agreement or any renewal thereof remove all or part of the attachments made pursuant to this Agreement by giving written notice to Licensor of its intentions to remove said attachments. The form of notice to be given by Licensee to Licensor is attached as "Exhibit III".

4.5 Licensee shall pay Licensor in advance, the estimated costs of transferring or rearranging Licensor's facilities, including

the replacement of poles, or the strengthening of poles, or guying required to accommodate the attachments of Licensee.

4.6 Licensee shall pay to Licensor the Net-Non Betterment cost of any pole replacement when Licensor requires the location then being used by Licensee unless the pole was previously replaced at Licensee's expense pursuant to Section 4.5 hereof.

4.7 Licensor shall make a post-attachment inspection of each new installation of Licensee's facilities on Licensor's poles and Licensee shall pay Licensor for the expense of such inspection at the rate of $2.00 per pole inspected. Such post-attachment inspection by Licensor shall not relieve Licensee of any responsibility, obligation or liability assumed by Licensee under this Agreement.

4.8 If, for any reason, Licensor is required to relocate or replace its pole or to make any change in the type, character or location of any of its facilities on such pole after Licensee has made attachments thereto, Licensor shall notify Licensee of such fact and of the time when such work will be performed. Licensee agrees that it will make the necessary rearrangements or transfers of its attachments at its own expense at or before the time Licensor makes such replacement, relocation or change in Licensor's facilities.

4.9 If Licensee fails to make the necessary rearrangements or transfers of Licensee's attachments concurrently with the Licensor's time schedule, Licensor shall have the right, but not

the duty, to perform such rearrangements or transfers. In such event the Licensee shall pay to Licensor a fixed fee of $10.00 for each rearrangement or transfer.

4.10 Licensor shall not be liable for any loss or damage to the Licensee's attachment or the system of which they may be a part, including the loss of, or interference with the service or use of said attachments or system, by reason of performing any of the work of rearranging or transferring such attachments or the manner in which such work is performed.

4.11 In no event, however, shall Licensor transfer Licensee's amplifier cabinets, power supplies or distribution cabinets. In addition, any attachment of Licensee that requires splicing in order to be transferred shall be made by Licensee.

4.12 If Licensor is required to return to the work site to remove the old pole as a result of Licensee's failure to re-arrange or transfer such apparatus at the time of the scheduled work, Licensee shall pay to Licensor a fixed fee of $100.00 per pole to cover the cost of returning to the site to remove the said pole or poles.

4.13 Section 4.12 may be waived by Licensor if Licensee is at the work site with the Licensor but is unable to perform said rearrangements or transfers, through no fault of Licensee.

ARTICLE 5

Specifications and Safety of Attachments

5.1 The specifications and safety requirements contained herein shall apply to all attachments made by Licensee pursuant to this Agreement and shall remain in effect until such time as a change in said specifications and/or safety requirements are deemed necessary by Licensor. In the event changes are made to such specifications and/or safety requirements they shall be issued by Licensor to Licensee and when issued shall form a part of this Agreement.

5.2 All work undertaken under this Agreement shall be performed in accordance with the following:

(a) The latest revision of the National Electric Safety Code, including all current and future supplements, as well as the National Electrical Code where applicable;

(b) The practices and specifications of the Licensor, attached hereto as "Exhibit IV";

(c) All applicable rules and regulations of federal, state and local agencies having jurisdiction in the matter.

5.3 All attachments shall be made and maintained in good repair at Licensee's sole cost and expense in accordance with the specifications as set forth in this Article, and in a place and manner satisfactory to the Licensor.

5.4 Licensee agrees that during the construction, maintenance and operation of Licensee's cables, equipment and devices, Licensee shall take the necessary precautions (whether said precautions are a result of the methods in which Licensee performs said work or the utilization of tools and/or devices during the performance of said work) to protect all persons (including employees of Licensee) and property against injury or damages that may result from Licensee's attachments to Licensor's poles. It shall be the sole responsibility of Licensee to properly instruct and train its employees as to the necessary precautions to be taken by Licensee's employees during the construction, maintenance and operation of Licensee's cables, equipment and devices on Licensor's poles. Licensor shall not be considered in any way responsible for the adequacy or inadequacy of such instruction or training nor the adequacy or inadequacy of such precautions.

5.5 Each attachment shall be made, repaired, maintained and removed in a safe and workmanlike manner, preserving clear pole climbing space and sufficient clearance between all wires and cables so as not to interfere with the serviceability, maintenance, repair and replacement of Licensor's wires and equipment.

5.6 Upon receipt of written notice from Licensor that any attachment made pursuant to this Agreement interferes with Licensor's property or endangers its employees, or conflicts with Licensor's use of said poles, Licensee shall, at its own cost and expense, alter, rearrange, improve, renew or repair said attachment

in such a manner as Licensor may direct. In the event of an emergency or failure to comply with written notice from Licensor within an agreed upon period of time, the Licensor may alter, rearrange, improve, renew or repair the facilities placed on said poles by Licensee, transfer them to substituted poles or perform any other work in connection with said facilities as may be required in the maintenance, replacement, removal or relocation of said poles, the facilities thereon, or for the service needs of Licensor, and Licensee shall, upon demand, reimburse Licensor for the expense thereby incurred.

ARTICLE 6

Attachment Fees

6.1 Effective January 1, 1978 Licensee agrees to pay Licensor, in advance, an annual attachment fee of $5.00 per attachment per pole for each attachment made pursuant to this Agreement. This attachment fee shall remain in effect until such time as a change in the attachment fee is deemed necessary by Licensor. In the event a change is made in the attachment fee, Licensor shall notify Licensee of such change in writing at least 120 days prior to the proposed effective date of such change.

6.2 If as a result of a field inventory survey, Licensor determines that Licensee has made attachments to poles of Licensor without the prior written approval of Licensor, Licensee agrees to pay to Licensor its costs of making said field inventory survey at

the agreed rate of $10.00 for each unauthorized attachment. Licensee also agrees to pay to Licensor, annual attachment fees for such unauthorized attachments for the period from the date of the last field inventory survey to the date the unauthorized attachments were discovered or for a period of three years, whichever is less.

6.3 Should any license be terminated by Licensor without any breach of covenant on the part of Licensee before the expiration of any full year or part thereof for which the attachment fee herein provided shall have been paid, then and not otherwise, Licensor shall refund to Licensee such part of said attachment fee as will correspond to the unexpired portion of such year.

6.4 The annual attachment fee shall be payable in equal quarterly installments. The first such installment will be due on or before thirty (30) days of the invoice date and the remaining installments will be due on or before 90, 180 and 270 days of the invoice date.

ARTICLE 7

Rights of Property

Nothing herein contained shall be construed to confer upon Licensee any rights of property in Licensor's said poles, or to compel Licensor to maintain said poles longer than its business requires, or as a guarantee to Licensee of permission from municipal or other governmental authority to place or maintain its attachments on said poles, or the right or permission to sublet space on Licensor's poles to others.

ARTICLE 8

Enforcement of Agreement

Failure of Licensor to enforce or insist upon compliance with any of the terms or conditions of this Agreement or any other items and conditions incorporated in any license issued hereunder, shall not constitute a waiver or relinquishment by Licensor of any of said rights or conditions.

ARTICLE 9

Interruption to Licensee's Service

Licensor shall not be liable to the Licensee for any delay, interruption to or interference, electrical or otherwise, with the Licensee's business or with the operation of its facilities caused by facilities or electric phenomenon of Licensor or any other cause, or for any claim for loss, cost, damage or expense incurred by the Licensee or any of its customers or employees, and the Licensee shall indemnify and save harmless Licensor from all such claims.

ARTICLE 10

Governmental, Municipal and Private Right of Way

The Licensee shall, at its own expense, secure any and all consents, franchises, certificates of approval and permits which may be now or hereafter required from any governmental agencies, federal, state or municipal, and from property owners

for or in connection with the placing, maintaining, renewing, operating, replacing and removing of its attachments on any pole or poles of Licensor for which a license has been granted. The Licensee shall at all times comply with all applicable laws, ordinances, rules and regulations pertaining to the placement, maintenance, operation or removal of its attachments. Upon the request of the Licensor the Licensee shall submit proof satisfactory to the Licensor that any or all of the foregoing have been obtained or accomplished before the Licensee's attachments are placed on said poles. In granting a license, Licensor makes no representation or warranty that Licensee may place its attachments on the pole or poles covered by a license without obtaining the consent of the municipality or property owners affected and makes no representation or warranty that any such consent is valid and sufficient; Licensee agrees to indemnify and save harmless and protect the Licensor from any loss or expense which Licensor may incur as a result of Licensee's failure to comply with the provisions of this Article 10.

ARTICLE 11

Liability

Licensee shall indemnify and save harmless Licensor from and against any and all losses resulting from injury or damage to persons or property, including injuries to the employees or damage to the property of Licensor or Licensee, arising out of, resulting from or in any manner caused by the presence, use or maintenance

of said attachments on said poles, or by the acts or omissions of Licensee's agents or employees while engaged in the work of placing, maintaining or renewing said attachments on said poles or of removing them therefrom, and such loss shall include all costs, charges, expenses and attorney's fees reasonably incurred in connection with such injury or damage and also any payments made by Licensor to its injured employees, or to their relatives or representatives, in conformity with the provisions of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident in the course of employment, whether based on negligence on the part of the employer or not.

ARTICLE 12

Insurance

The Licensee shall furnish proof of the following coverages, using the form hereto attached and made a part of, listed as "Exhibit V", on policies written with insurers acceptable to Licensor. Such certificates shall provide that there will be ninety (90) days written notice given to Licensor of any change in or cancellation of any policy certificates upon which a copy of policy is required of Licensee by this section of this Agreement. All coverages required of Licensee shall be in full force and effect during Licensee's performance of this Agreement.

All policies shall be written on an occurrence basis and

shall include (except 1 under Type of Coverage) PENNSYLVANIA POWER & LIGHT COMPANY as an Additional Insured. Policies shall contain endorsement (if terminology is not printed form) that Licensee policies shall be primary in all instances regardless of what, if any, like coverages are carried by PENNSYLVANIA POWER & LIGHT COMPANY.

All policies shall be subject to acceptance by the Licensor.

Licensee liability is not limited to the amount of insurance coverage required in this section of this Agreement.

	TYPE OF COVERAGE	LIMITS OF LIABILITY
1.	Workmen's Compensation Employer's Liability	Statutory $100,000
2.	Comprehensive General Liability	
	Bodily Injury Property Damage	$200,000 Per Occurrence 100,000 Per Occurrence
	Including but not limited to the following with same above limit of liability for Bodily Injury and Property Damage.	
	(a) Contractual Liability (b) Contingent Liability (if subcontractors are to be used) (c) Owner Contractors Protective Liability (if subcontractors are to be used) (d) Broad Form Care, Custody and Control (if work performed on PP&L property)	
3.	Comprehensive Vehicle Liability	
	Said coverage shall cover all licensed or unlicensed vehicles and/or automotive	

TYPE OF COVERAGE	LIMITS OF LIABILITY
equipment owned, leased or rented when used in connection with performance of this contract.	
Bodily Injury	$100,000 Per Person 300,000 Per Occurrence
Property Damage	100,000 Per Occurrence

ARTICLE 13

Bonding

The Licensee may at any time during the term of this Agreement be required to furnish a bond naming Licensor as obligee of such bond or other satisfactory evidence of financial security naming Licensor as Power of Attorney and beneficiary of said security, in such amount as Licensor from time to time may require. Said security shall guarantee the payment of any sum which may become due to Licensor for fees due hereunder or charges for work performed for the benefit of Licensee's facilities upon termination of this Agreement or upon termination of any license issued hereunder. "Exhibit VI" hereto attached and made a part hereof is a form of bond acceptable to Licensor if bonding is required of Licensee.

ARTICLE 14

Assignment of Rights

14.1 Licensee shall not assign or transfer this Agreement or any authorization granted hereunder, and this Agreement shall not inure to the benefit of Licensee's successors, without the

127-1257

Paulette Knisely
Contracts and Billing Coordinator

PPL Electric Utilities
Two North Ninth Street GENN4
Allentown, PA 18101-1179
Tel. 610.774.7145 Fax 610.774.6388
e-mail: pknisely@pplweb.com

NOV - 1 2006

October 30, 2006

Commuter Cable Television
Mr. Tim Criswell
513 Jordan Avenue
Montoursville, PA 17754

Dear Mr. Criswell:

The current pole attachment agreement between our companies dated January 1, 1991 provides under Article 6, Section 6.1 that in the event a change is made in the attachment fee, PPL Electric Utilities shall notify your company of such change in writing prior to the effective date of the charge.

Therefore, please be advised that effective January 1, 2007, the annual pole attachment fee will be adjusted from $8.62 per attachment to $9.22 per attachment. The adjusted fee is within the percentage increase defined in Article 6, Section 6.1. It is also in line with the lawful pole attachment rate according to the formula promulgated by the Federal Communications Commission.

PPL Electric Utilities will issue one invoice each quarter as they did in 2006. Pole attachment details will be included with your invoice for the first quarter.

Please retain this letter with your executed copy of the pole attachment agreement since this letter constitutes a supplement effective January 1, 2007 to said agreement for the adjustment in the annual attachment fee.

Sincerely,

Paulette Knisely
Contracts and Billing Coordinator

CATV/Billing/2007/Rate Letter

PPL

RETEL TV CABLE
COMPANY, INC.
MR. TERRY HUGHES
1842 HAYES AVENUE
WILLIMSPORT PA 17701

REFER ALL INQUIRIES TO:
PAULETTE KELLY 610-774-7145

PLEASE REFER TO THIS NUMBER WHEN
CALLING OR WRITING: M90166079 - 003

ITEM	DESCRIPTION	AMOUNT
1	RENT FOR ATTACHMENTS: CABLE TV PERIOD COVERED 1/01/2007 TO 3/31/2007 TOTAL AMOUNT DUE: DUE BY 2/01/2007 1,936.20 2-2-07 LIC 3543 TERMS: AS STATED ABOVE, OR NET 30 DAYS	1,936.20 Cogan Station

M90166079 - 003 INVOICE NUMBER
12/07/06 INVOICE DATE
1,936.20 TOTAL AMOUNT

PPL ELECTRIC UTILITIES CORP.
TWO NORTH NINTH STREET, ALLENTOWN, PA 18101-1179
FED. I.D. 230959590

844000000000041

EXHIBIT 2

CAHILL GORDON & REINDEL LLP
EIGHTY PINE STREET
NEW YORK, NY 10005-1702

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WRITER'S DIRECT NUMBER
202-862-8950
ckiser@cahill.com

March 17, 2016

VIA E-MAIL

Thomas B. Magee, Esq.
Keller & Heckman LLP
1001 G Street, NW
Suite 500 West
Washington, DC 20001

Re: Pennsylvania Power & Light Invoices

Dear Thomas:

We understand you and Pennsylvania Power & Light (PPL) have had conversations with representatives of Zito Media, LLC concerning unpaid invoices associated with certain cancelled Zito Canton, LLC pole attachment applications. This letter is to memorialize the Company's position regarding the disputed invoices. As Zito explained, those applications were not handled consistent with the timeline and processing requirements established by the Federal Communications Commission (FCC) for pole attachments, and Zito subsequently cancelled the applications before receiving a response from PPL as to whether the requested access would be granted or denied. The invoiced charges for these cancelled pole attachment applications are unjust and unreasonable and Zito requests PPL reduce the billed amounts. In support of this request, Zito provides the following:

First, under the FCC's pole attachment timeline, a utility has 45 days from receipt of an application to complete the survey and provide a response to the requesting attacher (subject to the size of the order and other factors). *See* 47 C.F.R. §§ 1.1403(b), 1.1420(c). Part of the survey process includes an engineering analysis by the utility. *See Implementation of Section 224 of the Act*, 26 FCC Rcd 5240, ¶ 24 (2011). PPL did not meet the required 45-day deadline (or even an extended 60-day deadline for a larger pole order) for any of Zito's applications, and in most cases PPL did not respond for more than 150 days after Zito submitted an application.

Given's PPL's significant delay in responding to Zito's pole attachment applications, Zito was well within its rights to cancel the applications.

Second, PPL's charges for surveys and engineering must be just and reasonable, and reflect only PPL's actual costs of any necessary engineering surveys. *See, e.g., Texas Cable & Telecommunications Association, et al. v. Entergy Services, Inc.*, 14 FCC Rcd 9138, ¶¶ 6-10 (1999). Survey work must be completed at a competitive rate consistent with the nature of the work actually done. *See, e.g., Mile Hi Cable Partners, L.P. et al. v. Public Service Company of Colorado*, 15 FCC Rcd 11450, ¶¶ 8-9 (2000) (subsequent history omitted). PPL's invoices are significantly higher than other utilities' charges for engineering surveys.

Third, the PPL invoices pertain to more than engineering surveys. The invoices state the charges are for "Make Ready – Engineering" or "Make Ready – Construction." Utilities are required to provide detailed invoices in advance of make-ready work. *See, e.g., Salsgiver Communications, Inc. v. North Pittsburgh Telephone Company*, 22 FCC Rcd 20536, ¶ 22 (2007). Zito is not required to commit to make-ready costs in an unspecified amount, with no opportunity to review them in advance. Zito must be provided an opportunity to review a cost estimate before incurring a make-ready cost, and that estimate must provide a reasonable amount of information sufficient to substantiate the make-ready charges. *See, e.g., Knology, Inc. v. Georgia Power Company*, 18 FCC Rcd 25615, ¶ 61 (2003). The invoices from PPL do not provide any detail regarding the charges, and were not provided to Zito for review in advance of the work being completed.

Please review this information and the disputed invoices with PPL, and let's schedule a call for next week to discuss adjustments to the invoices to resolve this matter.

Best regards,

/s/ Chérie R. Kiser

Chérie R. Kiser

cc: Colin Higgin, Vice President

EXHIBIT 3

CAHILL GORDON & REINDEL LLP
EIGHTY PINE STREET
NEW YORK, NY 10005-1702

LOYD ABRAMS
. HOWARD ADAMS
OBERT A. ALESSI
ELENE R. BANKS
NIRUDH BANSAL
AVID L. BARASH
ANDIS C. BEST
RADLEY J. BONDI
USAN BUCKLEY
EVIN J. BURKE
AMES J. CLARK
ENJAMIN J. COHEN
EAN M. DAVIS
TUART G. DOWNING
DAM M. DWORKIN
NASTASIA EFIMOVA
ENNIFER B. EZRING
OAN MURTAGH FRANKEL
ONATHAN J. FRANKEL

BART FRIEDMAN
PIERRE M. GENTIN
CHARLES A. GILMAN
JASON M. HALL
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*ADMITTED IN DC ONLY

May 17, 2016

VIA ELECTRONIC MAIL

Thomas B. Magee
Keller & Heckman LLP
1001 G Street, NW
Suite 500 West
Washington, DC 20001

Re: PPL Invoices to Zito Canton, LLC

Dear Thomas:

This responds to your letter of April 5, 2016. Zito Canton, LLC (Zito) appreciates Pennsylvania Power & Light's (PPL) willingness to discuss the disputed invoices associated with certain cancelled pole attachment applications. Zito values it long relationship with PPL and its wants to resolve the disputed invoices in a manner consistent with Federal Communications Commission (FCC) regulations. Such resolution, however, does not require Zito to first pay the disputed invoices and then seek refunds, pay invoices for make-ready work where no estimates have been provided, or accept unreasonable survey and engineering charges that do not reflect only PPL's actual cost of necessary engineering survey expenses to fulfill Zito's attachment applications.

First, Zito is under no obligation to pay for make-ready work when it was not given a cost estimate of the work to be performed. Your letter ignores the unambiguous Federal Communications Commission (FCC) rules that a utility "present to a cable operator or telecommunications carrier an estimate of charges to perform all necessary make-ready work." *See* 47 C.F.R. § 1.1420(d) (emphasis added). It is "unreasonable" to require Zito to "commit[] to costs in an unspecified amount, with no opportunity to review them in advance." *See Salsgiver Communications, Inc. v. North Pittsburgh Telephone Company*, 22 FCC Rcd 20536, ¶ 22 (2007); *see*

also Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and For Expedited Arbitration, 17 FCC Rcd 27039, ¶ 761 (2002) (finding it reasonable for Verizon to provide a cost estimate and other detailed information for make-ready work). A utility has "an obligation to provide a reasonable amount of information sufficient to substantiate its make-ready charges." *See Knology, Inc. v. Georgia Power Company*, 18 FCC Rcd 24615, ¶ 61 (2003). PPL failed to provide the required estimate, and has provided no information to substantiate the make-ready engineering invoices.

Second, Zito's decision to cancel its applications was not based on the "expense" of the pole attachments as you suggest, but rather on PPL's significant delay in responding to Zito's pole attachment applications. Zito was well within its rights to cancel the applications given that PPL did not meet the required 45-day deadline (or even an extended 60-day deadline for a larger pole order) for any of Zito's applications, *see* 47 C.F.R. §§ 1.1403(b), 1.1420(c), and in most cases PPL did not respond for more than 150 days after Zito submitted an application. Further, there was no obligation for Zito to hire a PPL-approved contractor. As the FCC's rule states, a cable operator or telecommunications carrier may hire a contractor. *See* 47 C.F.R. § 1.1420(i). In this case, Zito exercised its option to cancel its pole attachment applications rather than hire a contractor.

Third, under the FCC's timeline for pole attachments, the survey stage is the period during which "the pole owner conducts an engineering study to determine whether and where attachment is feasible, and what make-ready is required." *See Implementation of Section 224 of the Act*, 26 FCC Rcd 5240, ¶ 22 (2011). Survey and engineering charges must be just and reasonable, and reflect only PPL's "actual cost of necessary engineering survey expenses." *See Texas Cable & Telecommunications Association, et al. v. Entergy Services, Inc.*, 14 FCC Rcd 9138, ¶¶ 6-10 (1999). Survey and other charges should not include "expenses for which the utility has been reimbursed through the annual fee." *See id.* ¶ 5. "Survey work should be done at a competitive rate in consonance with the nature of the work to be done." *See Mile Hi Cable Partners, L.P. et al. v. Public Service Company of Colorado*, 15 FCC Rcd 11450, ¶¶ 8-9 (2000) (subsequent history omitted). Further, if the survey benefits PPL or other attachers to the pole, the survey cost cannot be borne solely by Zito. *See id.* ("The cost of an inspection of pole attachments should be borne solely by the cable company only if the cable attachments are the sole attachments inspected and there is nothing in the inspection to benefit the utility or other attachers to the pole.").

The amounts invoiced to Zito include unreasonable survey and engineering charges far beyond what was necessary to determine whether and where Zito's attachments were feasible. It appears PPL's contractor engaged in excessive engineering for the benefit of PPL at Zito's expense. This engineering included multiple photos of each pole, surrounding area, adjacent mid-spans, as well as mapping each pole onto a Google earth-like interactive map, which is uploaded to a PPL portal site (designed by its contractor for PPL) with electronic profiles of the poles, including metadata such as GPS coordinates, etc. This excessive engineering was for the primary benefit of PPL, all other attachers, and serves to upgrade PPL's outside plant database assets. It is unjust and unreasonable to expect Zito alone to bear the entire scope of these "platinum" standard survey and

engineering expenses, which clearly were intended to upgrade PPL's outside pole plant to a high-tech, digital mapping system.

Finally, Zito is under no obligation to pay the disputed invoices and then seek a refund. The two FCC decisions you cite are not applicable to Zito's situation. Those cases concern entities that were seeking stays to remain on poles and/or maintain their pole attachment agreements.[1] In both cases, the FCC determined that the complainants were not entitled to the stay requested because they could not demonstrate irreparable harm given their ability to pay the disputed amounts and later seek a refund. Neither decision supports your assertion that Zito is required to pay for make-ready work that Zito did not authorize via the FCC-required estimate process, to pay for pole attachment applications that Zito cancelled due to PPL's failure to comply with FCC-required timelines, or to pay excessive survey and engineering charges not related to Zito's applications.

Zito remains willing to discuss a reasonable settlement of the disputed amounts in line with just and reasonable charges reflecting only PPL's actual cost of *necessary* engineering survey expenses that are consistent with the responsibilities and obligations of PPL. Zito asks PPL to review the disputed invoices in light of the well-established FCC requirements for such charges.

Best regards,

Chérie R. Kiser

Chérie R. Kiser

cc: Colin Higgin

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[1] In addition, contrary to PPL's actions here, the *Salsgiver Letter Order* supports Zito's position. In it, the FCC considered it important to note that the utility provided an estimate for the make-ready work to the Complainant. This utility, your client, clearly understood that FCC rules require the utility to provide an estimate of make-ready costs to the applicant seeking attachment. This no doubt bolstered the utility's case and was referenced by the FCC because of its rule that an estimate must be provided. File No. EB-14-MD-005, *Salsgiver Telecom, Inc. for Temporary Stay Pursuant to Section 1.1403(d) of the Federal Communications Commission Rules*, Letter from Lisa B. Griffin, Enforcement Bureau, FCC, to Edward A. Yorkgitis, Jr., Counsel for Salsgiver Telecom, Inc., and Thomas B. Magee, Counsel for Pennsylvania Electric Company (dated Apr. 4, 2014).

EXHIBIT 4

From: Colin Higgin [mailto:colin.higgin@zitomedia.com]
Sent: Thursday, May 19, 2016 9:38 AM
To: 'Kelly Ragosta'; 'James Rigas'; 'Gerry Kane'; 'rjyanek@pplweb.com'; 'jesilverio@pplweb.com'
Cc: 'joe.laubach@zitomedia.com'
Subject: RE: Zito Outstanding Invoices - Notification from PPL

Ryan

This responds to your notice below that PPL will not be processing any new pole attachment applications from Zito, including those applications for which Zito has made payment, due to the parties' billing dispute, which you allege poses safety, reliability, and engineering concerns.

As you are aware, Zito has disputed the excessive charges associated with certain PPL invoices related to Zito's cancelled pole attachment applications. Zito has detailed its concerns to PPL's attorneys in correspondence dated March 17, 2016 and May 17, 2016.

Under the Communications Act and the FCC's rules, a utility may only deny access to poles "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." 47 U.S.C. § 224(f)(2). "Where a utility denies any request for access, the utility must explain its reasons for doing so within 45 days, in writing, with specificity, and with all supporting evidence and information, and also must explain how the information and evidence relate to insufficient capacity, safety, reliability or engineering purposes." *2011 Pole Attachment Order* ¶ 48; *see also* 47 C.F.R. § 1.1403(a), (b). Your email is the first suggestion of any safety, reliability or engineering issues, and provides no supporting evidence or information.

The current billing dispute between the parties does not involve safety, reliability, or engineering issues. The dispute has no effect on the "safe and reliable provision of utility services." The underlying intent of the rule is to impose a limitation on the denial of access to poles, which is not present with respect to Zito's pending applications. *Local Competition Order* ¶ 1158. PPL has no right to deny Zito access based on PPL's claim of "Safety, Reliability and Engineering reasons."

Further, PPL cannot "condition access on payment of a disputed claim." The FCC has been clear, "[d]ebt collection is not permissible grounds for denial of access." *Kansas City Cable Partners*, 14 FCC Rcd 11599, ¶ 18 (1999). Any other result would leave Zito at the mercy of PPL given PPL's "local monopoly in ownership or control of poles" and "exclusive control over access to pole lines." *2011 Pole Attachment Order* ¶ 4. PPL has received payment from Zito for certain pole applications, and is now required to move forward with the processing of those applications. PPL "is protected as it has in hand a tendered payment for its costs. . . [Zit]o has paid the estimated cost, [PPL] must proceed." *Kansas City Cable Partners*, 14 FCC Rcd 11599, ¶ 17 (1999). PPL also remains subject to the FCC's timeline for processing pole attachment applications. 47 C.F.R. § 1.1420.

Finally, Zito reiterates that it is under no obligation to pay the disputed amounts, and then seek a refund either from PPL or via the FCC complaint process. The FCC directs parties "to make every effort to settle their disputes informally before instituting formal processes at the Commission." *2011 Pole Attachment Order* ¶ 98. In this regard, the FCC's rules require "executive-level discussions" – "discussions among representatives of the parties who have sufficient authority to make binding decisions on behalf of the company they represent regarding the subject matter of the discussions." *2011 Pole Attachment Order* ¶ 100; 47 C.F.R. § 1.1404(k). PPL's refusal to engage in discussions with Zito regarding the disputed invoices violates the FCC's rules and stated preference that parties "engage in serious efforts to resolve disputes prior to the initiation of litigation." *2011 Pole Attachment Order* ¶ 98.

Zito expects that its pending applications will be processed consistent with FCC requirements, and reiterates its request that PPL re-examine the disputed invoices in light of the concerns raised by Zito in its correspondence of May 17, 2016.

Thanks
Colin Higgin
Vice President and General Counsel
Zito Canton, LLC
814-260-9588

EXHIBIT 5

From: Kiser, Chérie R. [mailto:CKiser@cahill.com]
Sent: Friday, June 03, 2016 12:02 PM
To: Magee, Thomas
Cc: Yanek, Ryan J (RJYanek@pplweb.com); Silverio, Jose E (JESilverio@pplweb.com); Shafer, Michael J (MJShafer@pplweb.com); Colin Higgin (colin.higgin@zitomedia.com)
Subject: RE: Zito and PPL

Tom:

Thank you for your recent response.

Zito would like to schedule an executive-level conference call to discuss the disputed invoices for Monday, June 6, 2016, between 10:30 and 3:00. Please let us know what time would work best for you and PPL.

We also did not receive the information to which you refer in your letter that explains and substantiates PPL's make-ready engineering and survey costs. Could you please forward it.

Please also confirm that PPL is processing the Zito applications for which it received payment per the FCC's timeline for pole attachment applications.

Best regards,

Chérie

EXHIBIT 6

From: Kiser, Chérie R.
Sent: Thursday, June 09, 2016 3:21 PM
To: Magee, Thomas
Cc: Yanek, Ryan J (RJYanek@pplweb.com); Silverio, Jose E (JESilverio@pplweb.com); Shafer, Michael J (MJShafer@pplweb.com); Colin Higgin (colin.higgin@zitomedia.com)
Subject: RE: Zito and PPL

Tom:

Thank you for your response.

Zito remains committed to resolving the disputed invoices for the cancelled applications. As a show of good faith regarding the disputed amounts, Zito is sending today a check for $50,000.00. It has never been Zito's position that it owes nothing, but rather that the amounts charged are excessive and unreasonable. The information you provided regarding these deputed invoices in your May 26, 2016 letter does not address Zito's concerns. Zito would welcome a call next Monday or Tuesday to discuss the disputed invoices further if PPL is available.

In light of PPL's decision to continue to refuse to process Zito's pole attachment applications, Zito has resolved that its only recourse appears to be to seek assistance from the Federal Communications Commission Market Disputes Resolution Division. PPL's decision to stop processing Zito's pole attachment applications, including those for which PPL has issued invoices and Zito has paid is unlawful and harmful to Zito's business operations.

Please let us know if PPL is willing to discuss the issues regarding the disputed invoices.

Best regards,

Chérie